

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

MERCK & CIE, BAYER PHARMA AG and	)	
BAYER HEALTHCARE	)	
PHARMACEUTICALS INC.,	)	
	)	
Plaintiffs,	)	C.A. No. 13-1272 (RGA)
	)	
v.	)	
	)	
WATSON LABORATORIES, INC.,	)	
	)	
Defendant.	)	

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MERCK & CIE, BAYER PHARMA AG and	)	
BAYER HEALTHCARE	)	
PHARMACEUTICALS INC.,	)	
	)	
Plaintiffs,	)	C.A. No. 13-978 (RGA)
	)	
v.	)	
	)	
WATSON LABORATORIES, INC.,	)	
	)	
Defendant.	)	

**~~PROPOSED~~ ORDER REGARDING INFRINGEMENT AND  
CLAIM CONSTRUCTION OF U.S. PATENT NO. 6,441,168**

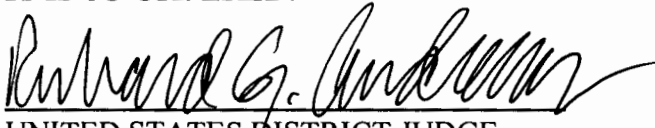
In view of the parties' foregoing stipulations, it is hereby **ORDERED**:

1. Defendant Watson Laboratories, Inc.'s ("Watson") filing of ANDA Nos. 203593 and 203594 constituted an act of infringement of claim 4 of U.S. Patent No. 6,441,168 (the "'168 patent"), assuming the claims are not invalid and are enforceable. Furthermore, the commercial manufacture, use, offer for sale, sale, and/or importation of Watson's Safyral® ANDA Product and/or Watson's Beyaz® ANDA Product would infringe claim 4 of the '168 patent, assuming the claims are not invalid and are enforceable.
2. The foregoing finding of infringement does not preclude Watson from contesting the validity or enforceability of claim 4 of the '168 patent.

3. The counterclaims asserted against Plaintiffs by Watson with respect to non-infringement of claim 4 the '168 patent by Watson's Safyral® and Beyaz® ANDA Products are hereby dismissed with prejudice and the counterclaims with respect to non-infringement of all other claims of the '168 patent are hereby dismissed as moot without prejudice.

4. The term "with 2 theta values of 6.5, 13.3, 16.8, and 20.1 (Type I)" is hereby construed to mean "with 2 theta values of 6.5, 13.3, 16.8, and 20.1 within the normal experimental error of X-ray powder diffraction of +/- 0.2 degrees."

**IT IS SO ORDERED:**

  
UNITED STATES DISTRICT JUDGE

DATED: February 19, 2014